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EXAMINER

MCALLISTER, STEVEN B

ART UNIT

PAPER NUMBER

3627

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 62-88 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 62 and 79 recite access to “usage information indicative of usage of an expendable which is used over a period of time” and comparing the “usage information with the usage profile data”. However, the specification and original claims appear only to describe access to usage rate information and comparison of the usage rate information with the usage profile data [indicative of expected usage rate]. The recitation of accessing and comparing usage information, as opposed to usage rate information, does not appear to be described in the original specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 62, 66-71, 79-82, 84 and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thieret (5,923,834) in view of Paton.

Thieret shows a controller configured to access usage rate profile data, comprising stored wear rate data or use rate of a consumable items; to monitor a parameter of the system indicating component wear or consumption of consumable items (e.g., col. 9, lines 50-55; col. 11, lines 17-23); and to generate an alert. Thieret does not explicitly show comparing the parameter with the usage rate data and generating the alarm when parameter deviates from the rate profile data. Paton shows comparing the parameter with the rate profile data, and generating an alert when the parameter deviates from the rate profile data. It would have been obvious to one of ordinary skill in the art to modify the method of Thieret by performing the steps of Paton in order to provide a warning when maintenance may have to be performed sooner than expected.

As to claims 66 and 82, Thieret in view of Paton show usage wear comprising wear of a consumable part.

As to claim 67, Thieret in view of Paton show all elements except that the controller is configured to identify the type of imaging occurring and to adjust the

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indication of wear responsive to the identification. However, to do so is notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art to further modify the apparatus of Thieret by configuring the controller to identify the type of imaging occurring and to adjust the indication of wear responsive to the identification in order to better deal with different types of imaging situations.

As to claims 68, Thieret in view of Paton show usage profile information derived from prior consumption of the consumable.

As to claims 69, 70, 77, 78, 84 and 85, Thieret in view of Paton show all elements of the invention except disabling the system and means for doing so. Thieret in view of Paton does however, show determining that there is a hardware failure within the system (e.g., pg. 4, lines 3-12 of Paton). The examiner takes official notice that it is notoriously old and well known in the art to disable a malfunctioning system (and to provide a means for doing so). It would have been obvious to one of ordinary skill in the art to further modify the method of Thieret by disabling a malfunctioning system in order to prevent further damage.

As to claim 71, it is noted that Thieret in view of Paton shows auto-reordering.

Claims 62-65, 68 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over LoBiondo et al (5,305,199) in view of Paton (EP 0822524).

LoBiondo shows a controller configured to access usage rate profile data, comprising use rate of a consumable items; to monitor a parameter of the system indicating or consumption of consumable items; and to generate an alert. LoBiondo

does not explicitly show comparing the parameter with the usage rate data and generating the alarm when parameter deviates from the rate profile data. Paton shows comparing the parameter with the rate profile data, and generating an alert when the parameter deviates from the rate profile data. It would have been obvious to one of ordinary skill in the art to modify the method of LoBiondo by performing the steps of Paton in order to provide a warning when additional consumables may be required sooner than expected.

As to claims 63 and 64, LoBiondo in view of Paton shows monitoring media usage comprising paper usage (see e.g., Fig. 3 of LoBiondo).

As to claim 65, LoBiondo in view of Paton shows monitoring a plurality of consumables (paper and toner).

As to claims 68, LoBiondo in view of Paton show usage profile information derived from prior consumption of the consumable.

As to claim 72, LoBiondo in view of Paton show all elements except that the controller accesses a budget plan, determines the cost of the consumption and generates an alert when the cost is over budget. However, to do so is notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art to further modify the apparatus of LoBiondo by having controller access a budget plan, determine the cost of the consumption and generate an alert when the cost is over budget in order to avoid excess costs.

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Claims 73, 75, 76, 83, 86, 87, 88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thieret in view of Paton as applied to claims 62 and 79 above, and further in view of Hopper et al (2003/0071726).

Thieret in view of Paton show all elements of the claims except adjusting usage data to show an increased or decreased usage in response to detection of a particular type of imaging. Hopper shows this element. It would have obvious to one of ordinary skill in the art to modify the apparatus and method of Thieret by doing so in order to more accurately reflect resource expenditure.

Allowable Subject Matter

Claim 74 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 10/25/2005 have been fully considered but they are not persuasive.

Regarding Applicant's argument regarding motivation regarding the references, the Examiner respectfully disagrees. The test for combining references is what the references as a whole would have suggested to one of ordinary skill in the art. See e.g., *In re Sheckler*, 168 USPQ 716 CCPA 1971); *In re McLaughlin*, 170 USPQ 209 (CCPA 1971).

Regarding Applicant's argument believed to be directed toward nonanalogous subject matter, the examiner notes that it would have been reasonable to look to Paton

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since both references are concerned with the same subject matter – monitoring of expendable items of a system.

Regarding applicant's argument that the teachings of Paton are redundant, the examiner notes that it is possible to use the data as taught by Thieret and to modify the system to use it as taught by Paton as well.

As to Applicant's arguments regarding Official Notice, the examiner notes that Applicant's traversal is inadequate. MPEP 2144.03(c) requires that the Applicant the subsequent action adequately traverse the statement that certain subject matter is old and well known art. It further notes that an adequate traversal must state why it is believed that the subject matter is not old and well known. In view of the inadequate traversal, and in light of the requirements of 2144.03(c), the examiner notes that the well known in the art statements of the previous Office Action are considered to be admitted prior art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (571) 272-6785. The examiner can normally be reached on M-Th 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander G. Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steven B. McAllister

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Primary Examiner
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STEVE B. MCALLISTER
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